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No. 02–1019

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2002

STATE OF ARIZONA,
PETITIONER,

-vs-

RODNEY JOSEPH GANT,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York v. Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

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STATEMENT OF JURISDICTION

This Court has docketed the State's Petition for Writ of Certiorari, and Respondent has filed a Brief in Opposition. Pursuant to Rule 15(6), Rules of the Supreme Court, Petitioner hereby submits the State's Reply.

REPLY TO THE BRIEF IN OPPOSITION

A. SUMMARY OF THE ARGUMENT.

Contrary to Respondent's assertions, his proffered test for the applicability of *New York v. Belton*[1] based on whether the suspect actually occupied the vehicle when first contacted by the police would not be "simple," or "easy to apply." Indeed, such a test would be unworkable—fraught with potential problems that are acknowledged, in part, in the concurring opinion below.[2] The appropriate inquiry under *Belton* is not whether the suspect "departed" the vehicle before the arrest or initial police contact, but whether the suspect was a recent occupant of the vehicle at the time of arrest.

Moreover, although Respondent points out that *Belton* is premised upon the "immediate area of control" concept espoused in *Chimel v. California*,[3] regarding a search incident to a suspect's arrest in his residence, *Belton*'s bright-line rule departs from *Chimel* in one fundamental aspect unique to vehicle searches: a *Belton* search may be undertaken after the arrestee is deprived of access to the "immediate area of control," i.e., the vehicle's passenger compartment. Thus, in contrast to *Chimel*'s narrower boundaries, *Belton*'s scope includes the arrestee's *recent* immediate area of control, established objectively by the arrestee's recent occupancy of the vehicle. *Chimel* does not circumscribe *Belton*.

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1. 453 U.S. 454 (1981).

2. *State v. Gant*, 202 Ariz. 240, ¶21, 43 P.3d 188 (App. 2002) (Pelander, J., concurring).

3. 395 U.S. 752 (1969).

B. ARGUMENT.

1. An "actual occupancy" test is unworkable.

Respondent urges this Court to adopt a test that he deems "simple and easy to administer": "If a defendant 'occupies' a vehicle at the time police initiate contact, the vehicle compartment may be searched incident to arrest." (Brief in Opposition, at 16–17.) But even one of the authors of *Gant* acknowledged the problems inherent in any actual-occupancy-at-the-time-of-contact approach. Quoting from the State's brief on direct appeal, Judge Pelander's concurring opinion provides a lengthy but far from exhaustive list:

> [T]he fine lines that courts may have to draw in this area are problematic:
>
> > [W]ould a suspect who has one foot in the vehicle and one on the ground be deemed "in" or "out" for purposes of *Belton?* Would that depend on whether some part of his body was still touching the seat? What if he had both feet on the ground but the door is still open and he's leaning into the passenger compartment—or just reaching in? What if he's sitting on the tailgate of a station wagon but his feet are touching the ground—could he merely stand up to render *Belton* inapplicable? What if the suspect is standing outside the vehicle but has left the engine running? . . . [C]ould the initial contact [by police] be non-verbal, such as a signal by hand, whistle, or flashlight? Or, because an actual-occupancy concept necessarily depends on the suspect's precise physical location at the time of contact, would the initial contact have to involve at least the officer's present ability to make immediate physical contact? Under such a rule, given the endless variations in the facts that

> Fourth Amendment issues inevitably engender, suppression hearings on *Belton* searches could become extended mini-trials on factual minutiae, and the actions of police officers in the field would have no predictable legal consequences in the courtroom.

Gant, at ¶ 20 (Pelander, J., concurring).

Respondent's proffered test of actual occupancy at the time of initial contact is unworkable. Instead, this Court should implement an objective assessment of *recent* occupancy, which in most cases would avoid the foregoing questions and the hair-splitting litigation that they would spawn.

No test promises litigation-free implementation, but a recent-occupancy test affords major advantages over requiring actual occupancy at the time of initial contact. First, as fully argued in the Petition, a recent-occupancy test focuses on factors amenable to objective measurement rather than attempting to ascertain, retrospectively, the suspect's actual or constructive awareness of the police before alighting from the vehicle. Second, because a recent occupancy test focuses primarily on the objective measurement of time and distance, the "problematic" "fine lines" listed above would not have to be drawn, absent a dispute as to whether the arrestee ever occupied the vehicle.

Because recent occupancy is an objective continuum of time, space, and movement, future decisions will determine the outer limits of spatio-temporal proximity to the vehicle, a question not presented here, where recent occupancy is an uncontested fact. Unlike an actual occupancy test, which unnecessarily burdens litigants and courts with attempting to determine the suspect's status at a precise moment in time (the initial police contact or attempt to contact), recent occupancy is much more amenable to a totality of the circumstances analysis, i.e., the arrestee's spatio-temporal association with the vehicle.

Respondent's arguments in favor of a rule requiring actual occupancy at the time of arrest or initial police contact are

unavailing. Recent occupancy is the only viable test for applying *Belton*.

2. **Belton**, *a marked departure from* **Chimel**, *is not circumscribed by* **Chimel**'*s present-exigency rationale.*

Respondent contends that *Chimel* limits *Belton*, but he is mistaken because *Chimel* did not involve a motor vehicle. In *Chimel*, the defendant was arrested in his own house, pursuant to an arrest warrant, and the police then searched the entire dwelling incident to the arrest. 395 U.S. at 754. This Court held the residential search illegal because:

> The search here went far beyond the petitioner's person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area.

Id. at 768. The holding was premised on exigencies that exist at the moment of arrest, e.g., officer safety while effecting the arrest, preventing escape, and keeping the arrestee from destroying evidence in the immediate area. *See id.* at 763–66. Regarding, in particular, searches of a person's abode incident to arrest, the *Chimel* Court declared that it could not envision "any point of rational limitation, once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items":

> [T]he only reasoned distinction [between permissible and illegal warrantless home searches incident to arrest] is one between a search of the person arrested and the area within his reach on the one hand, and more extensive searches on the other."

Id. at 766–67.

But *Chimel* did not involve a motor vehicle. In *Chimel*, this Court summarily rejected the idea that a man's house could be searched incident to his arrest if he were no longer inside the dwelling,[4] but in *Belton*, 12 years later, this Court upheld just such a search involving a motor vehicle. *Belton* reached a fundamentally different result on facts which, in *Chimel*, would not have supported a home search, because the search at issue in *Belton* was conducted *after* the arrestee had been removed from "the area within his reach," i.e., the vehicle's passenger compartment:

> [Belton's] jacket was located inside the passenger compartment of the car in which [Belton] *had been* a passenger just before he was arrested. The jacket was *thus* within the area which we have concluded was "within the arrestee's immediate control" within the meaning of the *Chimel* case.

453 U.S. at 462 (emphasis added). *Belton*'s reference to *Chimel* in that paragraph is a qualified one, because *Belton*'s holding did not strictly adhere to *Chimel*'s narrow parameters. Instead, *Belton* fashioned a unique rule for automobile searches incident to arrest —a rule that goes beyond *Chimel*'s seemingly absolute proscription against searching outside the area from which the arrestee might *presently* obtain a weapon or destroy evidence. Because the arrestee in *Belton* had already been secured outside the vehicle when the search occurred, the holding in *Belton* necessarily means that, for purposes of vehicle searches incident to an occupant's arrest, the area of control is the area of the arrestee's *recent*, but "not inevitably," *present* control. 453 U.S. at 460.

Fourth Amendment questions involving motor vehicles are unique, as this Court has repeatedly held in other contexts. *See*

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4. 395 U.S. at 765.

California v. Carney, 471 U.S. 386, 390–92 (1985) ("ready mobility" and pervasive regulation result in a reduced expectation of privacy in motor vehicles). Also, unlike an arrest effected in a suspect's dwelling, when police arrest a vehicle's occupant they cannot practicably or safely control the situation from inside the vehicle. *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (ordering driver out of the car during traffic stop is justified by officer safety concerns and de minimis intrusion); *see Michigan v. Long*, 463 U.S. 1032, 1049–50 (1983) (officers who have detained but not arrested a driver who may be dangerous may search vehicle's passenger area where a weapon might be hidden).

Chimel's "grab area" rule, as Respondent describes it, may control, without more, in other circumstances, but not when a motor vehicle is involved. *Belton* departed from *Chimel* by extending the scope of vehicle searches incident to arrest from the arrestee's *immediate* "grab area" to the arrestee's *recent* "grab area" as well. Thus, to determine whether *Belton* applies, the only viable test consistent with that expanded scope is whether the arrestee is a recent occupant of the vehicle.

Finally, contrary to Respondent's assertions, the State of Arizona does not advocate "'search[ing] at will' any vehicle somehow related to a particular defendant." (Brief in Opposition, at 16.) Reasonableness is always the key to balancing individual rights against the need for effective law enforcement. Petitioner simply urges this Court to adopt the test that is the most objective, easiest to implement, and most likely to achieve that balance: recent occupancy of the vehicle at the time of arrest.

CONCLUSION

Based on the foregoing authorities and arguments, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

Respectfully submitted,

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